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CITATIONS

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517100—43

In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 767

MARCO REGINELLI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the circuit court of appeals (R. 77–84) is not yet reported.

JURISDICTION

The judgment of the circuit court of appeals was entered January 25, 1943 (R. 84). The petition for a writ of certiorari was filed February 26, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rule XI of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

1. Whether *Caminetti* v. *United States,* 242 U. S. 470, in which this Court held that the interdictions of the Mann Act are not limited to instances of commercialized vice, should be overruled.

2. Whether there was sufficient evidence to warrant submission of the question of petitioner's guilt to the jury.

STATUTE INVOLVED

The Act of June 25, 1910, c. 395, Sec. 2, 36 Stat. 825 (18 U. S. C. 398), known as the Mann Act, provides:

> That any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or who shall knowingly procure or obtain, or cause to be procured or obtained, or aid or assist in procuring or obtaining, any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in any Territory or the District of Columbia, in going to any place for the purpose of prostitution or debauchery,

> or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in any Territory or the District of Columbia, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the court.

STATEMENT

Petitioner was indicted on April 21, 1942, in the District Court for the District of New Jersey upon three counts charging violations of the Mann Act, *supra* (R. 3a–5a). The first count, upon which petitioner was found guilty,[1] charged that petitioner aided and assisted in obtaining transportation for one Louise Abate from Camden, New Jersey, to Miami, Florida, with intent and purpose "to induce, entice, and compel" her to engage in illicit sexual intercourse with him. He was sentenced to six months in jail and to pay a fine of $1,500 (R. 2a). Upon appeal to the Circuit Court of Appeals for the Third Circuit, the judgment was affirmed (R. 84).

[1] The trial court dismissed the second count (R. 62a), and the jury returned a verdict of not guilty on the third count (R. 2a).

The evidence which supports the verdict may be summarized as follows:

In January 1942, petitioner, who lived in Camden, New Jersey, took an extended vacation at Miami, Florida (R. 11a, 43a). While en route to Florida, he sent telegrams to Miss Abate in endearing terms. Upon his arrival, he wired her his hotel address, expressed the sentiment that he wished she were "here," and also advised her that he would telephone her that evening (R. 13a). He called her that night, the toll charge being $12.15, again four days later, the toll charge being $70.65, and again on January 29, when the toll charge was $23.95 (R. 13a, 42a). Pursuant to an agreement reached in these conversations, petitioner made the necessary arrangements for the woman to go from Camden to Philadelphia by taxicab and from Philadelphia to Miami by airplane (R. 14a–17a). Petitioner met her at the airport at Miami, and, not having arranged any place for her to stay, took her directly to his hotel room. She stayed with him for ten days, sleeping in the same bed, and they had sexual relations. (R. 27a–28a, 38a.)

ARGUMENT

I

Petitioner urges (Pet. 9–13) that this Court reconsider and overrule its decision in *Caminetti* v. *United States,* 242 U. S. 470, which was ren-

dered in 1917. Since that time the rule of the *Caminetti* case that the Mann Act applies to non-commercialized vice, has been relied upon by the lower federal courts in numerous cases.[2] By implication it was recognized again by this Court in *Gebardi* v. *United States*, 287 U. S. 112, 120.[3] And this Court has denied certiorari in cases involving non-commercialized vice.[4] It may also be said that Congress, by allowing the statute to remain unamended, has acquiesced in this Court's construction of the statute, notwithstanding the legislative history upon which the dissenting opin-

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[2] See, e. g., *Francis* v. *United States*, 264 Fed. 513, 514 (C. C. A. 6); *Elrod* v. *United States*, 266 Fed. 55, 57 (C. C. A. 6); *Burgess* v. *United States*, 294 Fed. 1002, 1003 (App. D. C.); *Suslak* v. *United States*, 213 Fed. 913, 917 (C. C. A. 9); *Malaga* v. *United States*, 57 F. (2d) 822, 825 (C. C. A. 1); *Caballero* v. *Hudspeth*, 114 F. (2d) 545, 547 (C. C. A. 10); see also *Kelly* v. *United States*, 277 Fed. 405, 408 (C. C. A. 4); *Nokis* v. *United States*, 257 Fed. 413 (C. C. A. 8); *Blackstock* v. *United States*, 261 Fed. 150 (C. C. A. 8), certiorari denied, 254 U. S. 634; *Corbett* v. *United States*, 299 Fed. 27 (C. C. A. 9); *Drossos* v. *United States*, 16 F. (2d) 833 (C. C. A. 8); *Welsch* v. *United States* 220 Fed. 764 (C. C. A. 4); *Tobias* v. *United States*, 2 F. (2d) 361 (C. C. A. 9), certiorari denied, 267 U. S. 593; *Yoder* v. *United States*, 71 F. (2d) 85, 88; 80 F. (2d) 665 (C. C. A. 10); *Neff* v. *United States*, 105 F. (2d) 688 (C. C. A. 8).

[3] See also *Hansen* v. *Haff*, 291 U. S. 559, 563; *Brooks* v. *United States*, 267 U. S. 432, 437; *Armstrong Co.* v. *Nu-Enamel Co.*, 305 U. S. 315, 333.

[4] *Ghadiali* v. *United States*, 17 F. (2d) 236 (C. C. A. 9), certiorari denied, 274 U. S. 747; *Hart* v. *United States*, 11 F. (2d) 499 (C. C. A. 9), certiorari denied, 273 U. S. 694; *Hamilton* v. *United States*, 255 Fed. 511 (C. C. A. 8), certiorari denied, 249 U. S. 610.

ion in the *Caminetti* case and petitioner here (Pet. 9–13) rely.[5]

Under these circumstances, there would appear to be no impelling reason, nor does petitioner assert any, for this Court to overrule the *Caminetti* case. Cf. *Goldman* v. *United States,* 316 U. S. 129, 135–136.

II

Petitioner's contention that the evidence is insufficient to show that it was his intention that the woman be transported for immoral purposes (Pet. 13–17) is without substance. As the circuit court of appeals held, there was ample evidence from which the jury may have inferred that petitioner's "purpose in utilizing the facilities of interstate commerce for the transportation of the woman to Miami was so that he might have sexual intercourse with her there" (R. 81–82). This evidence was summarized by the court below (R. 80): "* * * there is Reginelli's telegram expressing his wish that she were in Miami and the further facts that it was he who made all necessary arrangements and provisions for her transportation from the north; that he was expectantly awaiting her arrival at the Miami airport; and that, without having procured a separate

[5] Cf. *Helvering* v. *Griffiths*, No. 467, this Term, decided March 1, 1943; *United States* v. *Elgin J. & E. Ry.*, 298 U. S. 492, 500; *Beale* v. *United States*, 71 F. (2d) 737, 739 (C. C. A. 8).

room for her, he went directly with her to his hotel and to his room where he thereafter engaged her in immoral practices."[6]

But petitioner contends (Pet. 14–16) that any inference from this evidence as to his immoral purpose is overcome by the so-called exculpating testimony of the woman to the effect that, over his objections, she persuaded petitioner to provide her transportation to Miami "for a vacation" and that it was upon her insistence that she lived with him in a hotel room there (R. 14a, 27a–28a). As the court below held, however, "The probabilities of the woman's testimony were for the jury whose duty it was to accept and interpret such thereof as seemed credible and to reject the improb-

[6] The jury was specifically advised that they could not return a verdict of guilty unless they found that the transportation was for an immoral purpose. The court charged (R. 65a–66a):

"* * * Of course, sexual intercourse between persons who are not married is a violation of that statute so far as the intent is concerned, but the mere fact that sexual intercourse was had between this girl and this defendant in Florida in itself is not evidence of a violation of this federal statute; that in itself cannot be, and I do not care how severe your morals may be with relation to a matter of that kind, you should not use that alone against the defendant in arriving at a verdict in this case. He is charged with a specific crime, and that crime involves the intention at the time that he made the arrangements, if he did, to have this girl go to Florida, and that at that time he intended to use her for immoral purposes when that arrangement was made, if it was made under the evidence, and that is the gist of this offense."

able. * * * Only by assuming the jury's province could the court have declared that Reginelli's opposition to the woman's trip to Miami and to her sharing his room with him while there, as related by the woman, was real and that it excluded Reginelli from participation in the woman's interstate transportation and its purpose." (R. 80). Cf. *Glasser* v. *United States,* 315 U. S. 60, 77; *United States* v. *Simon,* 119 F. (2d) 679, 682 (C. C. A. 3), certiorari denied, 314 U. S. 623; *Ryan* v. *United States,* 99 F. (2d) 864, 868 (C. C. A. 8), certiorari denied, 306 U. S. 635; *State* v. *Bentley Bootery,* 128 N. J. L. 555 (1942). Without objection by petitioner, the trial court instructed the jury that "You are to take from the testimony and evidence that has been given to you what you say is true and believable, and from that render your verdict" (R. 65a).

This is not a case where the entire testimony of a witness must be accepted because it is not fairly "open to challenge as suspicious or inherently improbable." Cf. *Chesapeake & Ohio Ry.* v. *Martin,* 283 U. S. 209, 214. On the contrary, insofar as the woman's story undertakes to establish petitioner's innocent intent, it is, we submit, inconsistent with her incriminating testimony and inherently improbable when measured with the accepted standards of good moral conduct. In the first place, it strains credulity to say, as petitioner

does in effect, that the trial court should have accepted as verity the woman's claim that petitioner spent more than $100 in telephone tolls in stressing his "opposition to the trip," and that when she arrived by airplane, as he had arranged, he actually voiced "objection to her staying with him" (Pet. 18). Secondly, unless petitioner had an immoral intent at the outset, it would seem that he would have arranged for separate living quarters for her before she arrived; at least he would not have taken her directly to his own hotel room unchaperoned and unannounced, even for the limited purpose of letting her "wash up first and rest" (see R. 27a, cf. R. 37a and 41a).

For the same reason, there is no merit to petitioner's contention (Pet. 17–18) that the "evidence is as consistent with innocence as with guilt." Apart from the questionable truth of the so-called exculpating testimony, the court below aptly said, it "was at best but slight evidence of what was actually in the defendant's mind" (R. 82). For the most part, the woman's evidence goes only to show what was in her own mind, and does not in any genuine sense tend to prove that petitioner's intention was one of unrelieved gallantry. Petitioner's alleged protest against her coming and his suggestion against their living in his hotel room did no more than present an inference which the jury was entitled to weigh along

with all the other evidence in the case. The case having been submitted to the jury under instructions (R. 63a–70a) which were "eminently fair to the defendant" (R. 84),[7] no sufficient reason appears why the concurrence of the trial court, the jury, and the circuit court of appeals as to the sufficiency of the evidence should not be accepted. *Delaney* v. *United States,* 263 U. S. 586, 589–590. See also *Patton* v. *Texas and Pacific Railway Co.,* 179 U. S. 658, 660.[8]

CONCLUSION

The decision below is correct, and there is involved no conflict of decisions or question of gen-

[7] The court instructed the jury: "* * * unless there is substantial evidence of facts, which excludes every other hypothesis but that of guilt, it is the duty of the jury to return a verdict for the accused" (R. 67a). See also instructions Nos. 12 and 13, given at petitioner's request (R. 69a). The court further charged "* * * If the evidence introduced by the Government merely raises suspicion and does not point to guilt with compelling force, your verdict must be not guilty" (R. 69a).

[8] *United States* v. *Grace*, 73 F. (2d) 294 (C. C. A. 2), and *Hunter* v. *United States*, 45 F. (2d) 55 (C. C. A. 4), cited by petitioner to show that this case "is the weakest ever to go to a jury in a Mann Act prosecution" (Pet. 18), are wide of the mark. In neither of those cases was there any evidence from which the jury could have inferred that the particular interstate journeys laid in the indictments were initiated with an immoral purpose. Cf. *Burgess* v. *United States*, 294 Fed. 1002 (App. D. C.); *Corbett* v. *United States*, 299 Fed. 27 (C. C. A. 9); *Tobias* v. *United States*, 2 F. (2d) 361 (C. C. A. 9), certiorari denied, 267 U. S. 593.

eral importance. We respectfully submit, therefore, that the petition for a writ of certiorari should be denied.

CHARLES FAHY,
Solicitor General.
WENDELL BERGE,
Assistant Attorney General.
OSCAR A. PROVOST,
Attorney.

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